BECKER STOWE BOWLES & LYNCH
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
THE CHANCERY, SUITE 1002
1120 LINCOLN STREET
DENVER, COLORADO 80203 2138
TELEPHONE (303) 830 0101
TELECOPIER (303) 860-9306

NORMAN B. BEECHER
OF COUNSEL

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June 3, 1996

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Secretary Caton:

Enclosed for filing please find an original and eleven copies of the Comments of the Greater Metro Cable Consortium In the Matter of Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, CS Docket No. 96-85.

Please let me know if you need any further information or materials. Thank you for your attention in this matter.

Sincerely,

Norman B. Beecher,
Of Counsel

c: Nancy Stevenson, Cable Services Bureau (with one copy)
International Transcription Services (with one copy)

NBB/cc\norman\fcc-cblf.cvr

FCC 96-154

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996	)	CS Docket No. 96-85
	)	
	)	

COMMENTS OF THE GREATER METRO CABLE CONSORTIUM
METRO DENVER, COLORADO

The Greater Metro Cable Consortium (the "GMCC" or "Consortium")[1] hereby submits the following comments in response to the Commission's Order and Notice of Proposed Rulemaking in CS Docket No. 96-85, released April 9, 1996 (the "NPRM"), which, *inter alia*, seeks comment from interested parties In The Matter of Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996 (the "1996 Act"). NPRM at 43, Paragraphs 128 and 129.

1. The GMCC Is an Interested Party

The GMCC is an interested party in this matter because the rules as ultimately promulgated by the Commission will affect both the GMCC's and its Members management of local public rights-of-way and their activities with regard to cable television rate regulation. Each of the GMCC's Members is a local

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[1] The Greater Metro Cable Consortium is a joint agency of its Member jurisdictions, 24 local subdivisions of the State of Colorado in the greater metropolitan Denver area. The Consortium was formed in 1992 by intergovernmental agreement for the cooperation in, and sharing information regarding, the administration, management, and regulation of communication and information systems and services. The Members of the Consortium include the Cities or Towns of Arvada, Aurora, Boulder, Castle Rock, Cherry Hills Village, Commerce City, Denver, Englewood, Edgewater, Glendale, Golden, Greenwood Village, Lafayette, Lakewood, Littleton, Northglenn, Parker. Sheridan, Superior. Thornton. Westminster and Wheat Ridge, and Adams and Douglas Counties.

franchising authority, and each administers at least one or more franchise(s) with cable operators ranging in size from the largest in the known world down to well within the definition of a small cable system. The GMCC was first certified to regulate cable television basic service tier rates jointly on behalf of twenty-two of its Members in accordance with the Commission's rules on November 15, 1993. It was recertified on behalf of twenty-three of its Members in 1995. Most of the GMCC's Members' subscribers have been notified recently of proposed CPS rate increases, and many are either in the process of, or about to commence, franchise renewal. Moreover, most GMCC Members have received significant numbers of technical quality problem complaints, and the current regional local exchange carrier, US West, has formulated plans for delivery of video programming in the GMCC area in the near future.

2. There Should Be No Deadline For Submission of CPS Rate Complaints to the Commission

In formulating the new procedure for filing of CPS rate complaints, Congress established only one deadline: in order to file a complaint with the Commission, a local franchising authority must receive complaints from subscribers within ninety (90) days of the date when the new rate becomes effective. As a practical matter, this deadline will provide assurance to the cable operator that rates will not be challenged long after implementation. A limitation is otherwise unnecessary to protect cable operators' rights. The new rate is already in effect, by definition, at the commencement of the local review period, since complaints can only be filed *after* the new rate is in effect. 47 C.F.R. Section 76.964. Therefore, the cable operator is not losing revenue during the pendency of any proceedings at the local level. There is no other reason to impose a deadline.

Moreover, in mandating that only local franchising authorities may submit cable programming service tier ("CPS") complaints directly to the Commission, Congress evidently intended that local franchising authorities act as compilers and winnowers of individual complaints. See 1996 Act Section 301(b)(1)(C), to be codified at Section 623(c)(3). The Commission has further tentatively interpreted Congressional intent to require that cable operators be afforded 30 days to file with local franchising authorities relevant FCC forms to justify proposed rate increases (or a certification that the operator is not subject to regulation.) NPRM at 11, Paragraph 22. Presumably, the local franchising authority should consider any material submitted to

it, or the process becomes meaningless, and the material may as well be submitted directly to the Commission. So all chronological considerations applicable to other review processes involving local franchising authorities the Commission has established apply here, and more. Indeed, the Commission has neither proposed any changes to 47 C.F.R. Section 76.910, nor preempted any rules local franchising authorities may have promulgated in accordance with the Commission's direction thereunder.[2] Thus, not only will local jurisdictions across the country have differing local requirements as to the approval process for any filing, they may well have different procedures with regard to rate regulation and the requirement of public input.

Unless complaint(s) submitted on the last day of the subscriber complaint period are to have no effect (an absurd result), therefore, a local franchising authority such as the GMCC must accomplish the following steps in the second half of the 180-day period established under the Commission's proposed rules. In addition to the implied responsibility to evaluate the proposed rates initially against the Commission's standards (to some degree this may be done in the first half of the 180-day period, unless, of course, complainants raise new issues to be considered), a franchising authority such as the GMCC must, *inter alia,* 1) discuss or clarify the complaint with the complainant (in accordance with GMCC policy, see 47 C.F.R. 76.910(b)(1)); 2) provide opportunity for input from the public (see 47 C.F.R. 76.910 (b)(3)), 3) determine a course of action, which in the GMCC's case would include consultations among elected officials and staff, at least one monthly meeting of the Rate Regulation Committee, followed by a meeting of the GMCC's Board; and, if it determines to proceed, 4) provide notice to the cable operator of the complaint and its intent to proceed, 5) allow the cable operator *at least* thirty (30) days to respond (see NPRM at 11, Paragraph 22); 6) evaluate the response, and any materials submitted therewith, including conducting a re-evaluation of the rates against the Commission's standards, 7) make a new determination in view of any material received (which may include a reprise of all the steps discussed in item (3), above), 8) prepare a complaint for the Commission, and 9) file

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[2] 47 C.F.R. Section 76.910 sets forth requirements for certification to regulate basic service tier rates, but presumably the regulations apply to all forms of cable television rate regulation. It would be flatly impractical and overly cumbersome to have different local procedures for CPS and basic service tier regulation. Indeed, the average subscriber has no concept whatsoever of these distinctions. In any event, the GMCC and every other jurisdiction with which it has consulted in this matter has one set of procedures and local regulations applicable to all forms of cable television rate regulation

the complaint, together with the operator's response, with the Commission. All this leaves no room for requests for additional information from the cable operator, or meetings and discussions between the cable operator and the local franchising authority, and *still* 90 days from the final complaint (180 days, total) is patently inadequate to complete this process. Other jurisdictions may have more complex procedures, promulgated in accordance with the Commission's prior directives to ensure pubic input and to adopt regulatory procedures in accordance with 47 C.F.R. 76.910 See footnote 2, supra.

The Commission has, in the past, established a standard of 120 days for review by local authorities in non-cost-of-service showing cases, prior to the addition of the procedures of the 1996 Act. 47 C.F.R. 76.933. Moreover, the Commission has recently approved the Form 1240 process, by which, if cable operators find uncertainty and numerous rate changes too burdensome, they may consolidate rate increases into one annual filing. Thus cable operators have at their control the means to mitigate any uncertainty resulting from protracted rate review at the local level. No real damage will result in any event, as discussed above. To arbitrarily curtail the time a local franchising authority has to submit a complaint to the Commission to 90 days, will as a practical matter, limit the local franchising authority's role in the process -- clearly the opposite of the result Congress intended. Moreover, the likelihood of, and the harm from, complaints remaining outstanding is minimal, and far outweighed by the damage done if valid complaints are invalidated for procedural reasons, or the role of the local franchising authority in the CPS rate process is vitiated. Indeed, to impose a cookie-cutter, one-size fits all schedule upon local jurisdictions, for no reason aside from administrative convenience is, from a functional standpoint, simply arbitrary.

The Commission should include in its rules only the 90-day limitation applicable to receipt of subscriber complaints contained in the 1996 Act. Alternatively, if the Commission deems a time limit of some sort imperative, the Commission should allow a full 270 days from the date the rate increase is effective for local franchising authorities to file complaints with the Commission.

3. The Cable Bureau's Address and Number Should Appear On All Bills

The Commission requests comment additionally as to its proposal to eliminate the requirement that cable operators include the name, mailing address and telephone number of the Commission's Cable Services

Bureau on monthly subscriber bills. The GMCC believes it is important to continue to provide this information to subscribers in the most accessible, convenient form available.

The 1996 Act somewhat limits local authorities' ability to regulate certain matters, such as technical standards, placing the responsibility for such regulation more squarely upon the Commission. 1996 Act Section 301(e); and see 47. U.S.C. Section 544(e). Moreover, many of the Commission's rules presently permit "interested parties" or "any party" to petition the Commission for relief with regard to violations of the Commission's regulations by a cable operator. See, e.g., 47 C.F.R 76.7 and 76.11. If the Commission is inaccessible to the average subscriber, these protections will be meaningless. The average subscriber will be left without any options in the event of technical problems, and many other matters of concern. The regulatory system will have broken down. At this juncture, to deprive subscribers of the information necessary to access the one agency with the capability to address concerns is absurd and inimical.

While there may be other means by which the typical subscriber may obtain the information necessary to interact with the Commission, there are none so accessible, and none, based on the GMCC's complaint histories, with which subscribers are familiar. Subscriber bills are the sole printed materials cable customers review every month; nothing else receives similar attention. To deprive cable customers of this information option is to abdicate the Commission's responsibility to subscribers, who are as much its constituency as any other segment of the population. Indeed, many of the Commission's NPRM's, which call for public comment, are announced to the general public only through the press, which rarely provides specific information on the Cable Bureau. If Commission information is removed from cable subscriber bills, we might presently be in an anomalous situation where subscribers wishing to comment on the present NPRM would be unable to do so for lack of information. The Commission, with an even more central role in cable regulation under the 1996 Act, should make itself more accessible to the public, rather than less.

The only result of removing the Cable Bureau address and number from bills will be to make the Commission, the appropriate regulatory agency, less accessible to subscribers. That would be contrary to the Commission's primary purpose to safeguard the public interest. NCTA v. U.S., 415 U.S. 336, 39 L.Ed 2d 370, 94 S. Ct. 1146 (1974);; Regents of New Mexico College v. Albuquerque Broadcasting Co., 158 F.2d 900 (10th Cir. 1947), and would tend to dispossess a major constituency the Commission was created to serve.

4. The Commission Can Advance Congress' Goal Of Encouraging the Deployment of Advanced Telecommunications Capability By Preempting State Laws That Prohibit the Requirement of In-Kind Services as Compensation For Use of Public Rights-of-Way.

In the NPRM, the Commission requests comment on how it can advance Congress' goal of encouraging the deployment of advanced telecommunications capability, including, in particular, in schools and classrooms. NPRM at 40, Paragraph 109. One of the most productive mechanisms for achieving wide deployment of communications services, particularly with regard to educational agencies, has been the requirement of in-kind services through the franchising process or as compensation for use of public rights-of-way. See, 47 U.S.C. 534; Daniels Cablevision v United States, 835 F Supp. 1 (DC Colo., 1993). Every franchise agreement administered by Members of the GMCC currently contains provision for in-kind services by the cable operator, as does the model franchise agreement prepared by the GMCC for Member renewals. In few other ways have we as a society been able to develop a means of providing public, non-profit, and educational organizations and individuals access to public media. The United States has developed an industry, the PEG industry, that while, canonized in marginal movies, has truly become a model for the world. Nor has the requirement of in-kind services harmed the cable industry, which has flourished even as these requirements have become almost universal. Indeed, the cable industry, which often opposed in-kind service requirements has begun to recognize the value of the special connection to the community PEG and local deployment of services provide, and tout them to their advantage over competitors. The requirement of in-kind services has produced services for schools and governments which would otherwise be unable to afford them, and done this efficiently, in that the cost of in-kind services to the provider is nominal when compared to the retail cost to schools.

In the 1996 Act, Congress recognized the right of local governments to receive compensation for local public rights-of-way. 1996 Act, Section 253(c). Section 303 of the 1996 Act prohibits the requirement of any telecommunications service or facilities, *other than institutional networks, or except as permitted in Sections 611 or 612,* by a franchising authority as a condition of the grant, renewal, or transfer of a franchise (emphasis added). But the exemption not only of PEG requirements, but I-NETs as well demonstrates that Congress' intent was to bar limits on the technological playing field and to prevent local authorities from forcing cable operators to provide telecommunications services under their cable franchises. In the structure of the

exemptions and of the 1996 Act overall, Congress clearly recognized and approved the current system for provision of in-kind services.

Yet despite effusive lip service to the goals of education and the benefit to the public of the deployment of the Information Superhighway during lobbying for the Act, industry interests have sought aggressively since its passage for state legislation that inhibits educational goals. In Colorado, industry interests succeeded in passing a bill, Senate Bill 10, which prohibits in-kind services generally as compensation for use of public rights-of-way, and in other states such bills are pending. The most important action the Commission could take to assure full deployment of telecommunications services would be to act as assertively as it has on the industry's behalf with regard to placement of satellite earth stations, and preempt state or local laws that prohibit requirement of in-kind services. Under Section 253 of the 1996 Act, the Commission may, after notice and opportunity for public comment, preempt any state or local statute that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Section 253, (c) and (a). Laws that flatly prohibit in-kind service requirements, whether as part of contracts or as compensation for use of the public rights-of-way, clearly inhibit the deployment of services, and prohibit entities (not only schools and governments, but telecommunications providers seeking alternative, possibly less-expensive means of compensation) from providing intrastate telecommunications service.

Such laws should be preempted. No other action would better ensure that our society will provide telecommunications services to our schoolchildren and the broadest possible public access to telecommunications services throughout our society

5. Technical Standards Should Continue to Be Enforced at the Local Level In Accordance with the Commission's Rules, and Sections 626 and 621 of the Cable Act.

Congress' apparent intent in revising Section 624(e) of the Cable Act was to homogenize technical standards and the enforcement procedures applicable thereto. Consistent with its approach in other areas of the 1996 Act, Congress intended to avoid having differing standards applicable in different places. It did not intend to abandon technical requirements. Indeed, by NOT modifying the Commission's current standards and enforcement system, it clearly expected the current system to remain in place. Similarly, in not revising Sections 626 and 621 of the Cable Act, Congress evidently perpetuated the ability of local franchising authorities to consider the technical quality of services and signals during renewal, and of technical

qualifications during award of a franchise. There should be one set of standards, and one set of rules for enforcement, but continued enforcement at the local level as currently provided in the Commission's rules, 47 C.F.R. Section 76.607, since, as a practical matter, that is the only level at which enforcement is likely to occur.

* * *

The GMCC strongly endorses the Comments submitted by its Member, the City and County of Denver. The Commission should particularly consider Denver's thoughtful comments regarding technical standards, which the GMCC would reiterate here but for the risk of repetition.

6. Conclusion.

In accordance with Congress' intent in adopting the 1996 Act, the Greater Metro Cable Consortium respectfully urges the Commission in implementing the new law's provisions regarding the Cable Act, to:

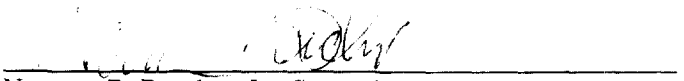
1) Place no time limitations upon local franchising authority transmission of subscriber CPS tier complaints to the Commission;

2) Retain its requirement that cable bills list the Cable Bureau's name, address, and telephone number;

3) Preempt state laws prohibiting requirement of in-kind services as compensation for use of the public rights-of-way in order to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans; and

4) Continue to enforce, and maintain procedures by which local authorities can continue to be involved in the enforcement of, technical standards.

Respectfully submitted,
GREATER METRO CABLE CONSORTIUM



Norman B. Beecher, Its Counsel
Becker Stowe Bowles & Lynch P.C.
1120 Lincoln Street, Suite 1002
Denver, Colorado 80203
(303) 617 9000 or 830 0101